

MINUTES
ENERGY, ENVIRONMENT AND TECHNOLOGY
INTERIM COMMITTEE
WEDNESDAY, OCTOBER 5, 2005
9:30 A.M.
JOINT FINANCE-APPROPRIATION COMMITTEE ROOM
STATEHOUSE, BOISE, IDAHO

The meeting was called to order at 9:30 a.m. by cochairman Senator Brent Hill. Other committee members in attendance were Cochairman Representative George Eskridge, Senator Patti Anne Lodge, Senator Tom Gannon, Senator Curt McKenzie, Senator Gerry Sweet, Senator Clint Stennett, Senator Elliot Werk, Representative Maxine Bell, Representative Steve Smylie, Representative Joe Cannon, Representative Bob Nonini and Representative Elaine Smith. Representative Ken Andrus was absent and excused.

Others present were Roy Eiguren, Givens Pursley; Teri Ottens, Community Action Partnership; Russell Westerberg, PacifiCorp; Daniel Byrnes, Bonneville Power Administration; Dick Rush, Idaho Association of Commerce and Industry; Kerry Ellen Elliott, Idaho Association of Cities; Brenda Tominaga, Idaho Irrigators and Pumpers Association; Ken Miller, Northwest Energy Coalition; Rich Hahn and Kip Sikes, Idaho Power; Bob Hoppie, Idaho Energy Division; Rachel Hall, Department of Energy-Idaho; Sarah Bigger, BSU; Neil Colwell, Avista; John Lund, OIT; Dar Olberding, Ridgeline Energy; Lauren McLean, Idaho Conservation League; Martha Arcos, Congressman Otter's Office; Karl Tueller, Office of Science and Technology; Robert Neilson, Idaho National Laboratory and Brian Jackson, Renaissance Engineering. Staff members present were Mike Nugent and Toni Hobbs.

Representative Nonini moved that the minutes from the last meeting be approved. Senator Gannon seconded and the minutes were approved unanimously by voice vote.

After opening remarks from the cochairmen, **Mr. Martin Bauer, DEQ** was introduced as the first speaker to discuss air quality permitting as it relates to energy facility siting.

Mr. Bauer began by explaining that DEQ's mission statement is to protect human health and preserve the quality of Idaho's air, land, and water for use and enjoyment today and in the future.

He stated that air quality permits, with regard to proposed energy facilities, are required because the EPA requires states to protect the national ambient air quality standards. These standards

include:

- C NAAQS
 - C HEALTH BASED STANDARDS
 - C PM₁₀, CO, NO₂, SO_x, OZONE, LEAD

This last group are the pollutants for which Idaho has health based standards for.

Mr. Bauer said there are two distinct programs in air permitting. These is a minor source program and a major source program. He said the EPA has required all states to address minor sources and draft regulations. He said the EPA is quite flexible with regard to minor sources.

Major facilities on the other hand are very regimented as to what can and cannot be done. The EPA has drafted rules that are in the code of federal regulations. It is a dedicated program which DEQ has delegation for, meaning that DEQ has state rules that mirror these federal rules for major facilities. He stated that major facilities are facilities that have emissions greater than or equal to a major threshold generally 250 tons per year of any one pollutant.

Mr. Bauer went on to discuss what type of permit is required for a large facility or large source. It is called a Prevention of Significant Deterioration Permit (PSD) and is applicable in attainment areas only. An attainment area is an area that meets the national ambient air quality standards or a clean area. Idaho for all intensive purposes is an attainment state.

The goals of a PSD program include:

- C Ensuring economic growth while preserving existing clear air resources.
- C Protecting public health and welfare from adverse effects even at level better than the NAAQS.
- C Preserving, protecting, and enhancing the air quality in special areas such as national parks and wilderness areas.

Mr. Bauer said that the program realizes that when large sources come in to a state, they are going to deteriorate the air quality to a certain extent. This program requires it to be insignificant or constrains it so it will be insignificant.

A PSD permit application requires that an applicant:

- C Describe the new facility
- C Estimate emissions
- C Determine regulatory applicability
 - C NSPS, NESHAP, MACT
- C Estimate ambient impacts
- C Conduct best available control analysis (bact)
- C Additional analysis
 - C Soil and vegetation, visibility
- C Class I analysis
 - C National parks, wilderness areas

He stated that the first four bullet points are required from any source the comes into Idaho, large or small.

After the application is received, DEQ:

- C Reviews emissions inventory for accuracy
- C Reviews impact analysis to ensure NAAQS compliance
- C Provides 30-day public comment period
- C Provides for a public hearing
- C Involves EPA
- C Involves Federal Land Managers in Class I analyses

Mr. Bauer said that since the rules are federally delegated to the state for major sources and if a source meets all of those rules, the state is obligated and required to issue a permit. He explained that when the permit is issued, the analysis is based on their fence line emissions or where the public has access to the facility. When the permit is issued, the analysis shows that this facility is meeting the national ambient air quality standards and all other requirements at that facility boundary. This is protecting the health and air quality where the public has access. Once DEQ has made the determination that it meets these standards, the facility can site wherever it wants to. DEQ does not look at any other factors.

In order to make sure a facility is complying with its permit, DEQ has:

- C Operating, monitoring, recordkeeping and recording requirements.
- C Source testing requirements

Mr. Bauer explained that source testing includes sources required to test the emissions coming out of a stack. While testing those emissions and assuming they are in compliance with the limit, throughputs, flow rates, temperatures and so on are also monitored and become surrogate monitors that are used by DEQ on a daily, monthly or quarterly basis to determine whether a facility is in compliance with its permit.

- C On-site inspections
 - C Conducted by DEQ compliance officers
 - C Review records to ensure compliance
 - C Includes all source testing records

For a large source more than one air quality permit is required. These are Tier 1 Operating Permits and is also known as a Title 5 Operating Permit to the EPA. This is another delegated program that is specifically lined out on what can and cannot be in a permit. He said the Tier 1 program is not an ambient air quality protection program. This program was put in place at the request of industries as an administrative program to bring all applicable requirements for a facility into one document. He said that any large source in Idaho requires this as well as a PSD permit. Tier 1 operating permits require semi-annual monitoring reports and annual compliance certifications. **Mr. Bauer** said this compliance certification is very important because that is where the facility has to say whether they are or are not in compliance.

Senator McKenzie asked for a general idea of how large a facility needs to be to be considered major. **Mr. Bauer** said that is based on the emissions they put out. He said megawatt size is not always what makes a source major. **Senator McKenzie** clarified that this meant it depends on emission controls a facility has, not the size. **Mr. Bauer** said that was correct. It is based on the design of a facility, not the size.

Senator McKenzie asked if there are any facilities in Idaho regulated as minor facilities. **Mr. Bauer** said there are 12 major facilities in Idaho and those are not necessarily power plants. He said this is a relatively small amount compared to other states. **Senator Gannon** asked for an example of the major facilities in Idaho. **Mr. Bauer** said those include phosphate facilities, acid plants and sugar plants.

Senator Werk asked if the permitting process is an exact science. **Mr. Bauer** said his presentation gave a very brief overview and for each area he discussed there are gray areas that exist. There is a lot of policy and guidance that goes into each of these and it is not an exact science. There is a lot of negotiation that goes on. He said there are areas that are within compliance of each rule, with some areas being more stringent and others being less stringent. He said it is designed that way to allow for some flexibility for certain issues. If a plant is not in an airshed sensitive basis, it might be okay to allow some flexibility. He said this flexibility is usually allowed more in the minor source program.

Senator Werk asked in trying to characterize the amount of resources and expertise involved in both sides of the permitting process, both the power plant and the state side, would that be equal. **Mr. Bauer** said yes, there are very competent consultants in both the industry and in the state agencies.

Senator Werk asked who can request a public hearing and who decides if such a hearing is held, how open is it and where is it held. **Mr. Bauer** said anyone affected or interest in a project can request hearing be held. He said these hearings are not an open question and answer format. A hearing is specifically allowed to let people put their comments on record orally. There is a public comment period required for people to submit written public comments and a hearing is allowed if requested so comments can be presented orally, it does not give them a chance to ask question or to get responses back. **Mr. Bauer** said that hearings are generally held in the area most affected because they are expensive and usually only one hearing is held.

Senator Stennett asked about mercury and if it is included on the air quality pollutant list. **Mr. Bauer** said the pollutants he listed above are regulated within federal standards in protection of the national ambient air quality standards. Hazardous air pollutants such as mercury are regulated through technology based standards. In other words standards have been developed for the maximum achievable control technology decreasing those emissions as much as possible but it is not associated with a health based standard. **Mr. Bauer** noted that there is a new source performance standard that is currently in existence that requires plants to meet a certain regulation for mercury but it is a technology based standard.

Senator Stennett asked if there are other states have mercury listed as an air quality standard or health based standard under more stringent rules than Idaho. He asked if so, is there is a way to make this happen in Idaho. **Mr. Bauer** said he is not aware of any other state that has a health based standard for air pollutants but it can be done. It would require a risk assessment and setting of a standard.

Senator Stennett said Idaho has superior air quality compared to the national ambient air quality. He asked how the state can protect that superior quality. **Mr. Bauer** said that is what the PSD program does. This puts in place an increment that is lower the national ambient air quality that prevents source from going above that lower pollution level. It prevents the significant deterioration and prevents the source from going to that national ambient air quality standards in the area. **Senator Stennett** asked to whom and how would someone appeal a DEQ air quality standard permit. **Mr. Bauer** said that any final agency action or inaction is appealable. On the cover letter sent out by DEQ, it states that anyone can appeal any issues with the permit. It is appealable to the board first.

Representative Cannon clarified that a permit is not sensitive to an area, it is not where it emits the pollutants, it is what it emits that is important. **Mr. Bauer** said that was correct. The analysis that is done ensures protection the fenceline. **Representative Cannon** asked if there is cumulative affect of many plants being located in the same area that might affect another plant from getting a permit. **Mr. Bauer** said it is cumulative, if an industrial area is polluting to certain amount, the new plant has to be added to that and if the total is above the standard, that permit must be denied. The facility has to prove they can meet the standards of certain locations, after that they can locate anywhere.

Representative Smylie clarified, for example in looking at the plant that is proposed at the FMC site, the people in Bannock County who would be downwind from that would have ample opportunity to take part in the process and the hearing process and that particulates that would be affecting that area would be part of the consideration of any permit. He said it was his understanding this would also be true of any other site, it does not have to be in that particular political jurisdiction, it would affect the entire area where that air or watershed would be. **Mr. Bauer** said that was correct.

Representative Eskridge asked, since DEQ administers these federal requirements, if the state can set standards that are more stringent. **Mr. Bauer** said he believes so if the legislature approves that.

In response to a question from **Senator Werk**, **Mr. Bauer** said that Idaho does not have a large coal fired plant project so DEQ has not ever permitted for one.

Senator Werk asked if fugitive emissions are taken into account under the large facility permitting process. **Mr. Bauer** said they were.

Senator Hill asked how difficult is it to get a permit. He asked how existing facilities fit into these requirements and if they are required to meet the same standards. **Mr. Bauer** said existing facilities are required to meet the same standards. For instance if an existing facility wants to modify, this program may apply to them as well. **Mr. Bauer**, in response to **Senator Hill's** first question said that the standards are out there and for the most part, contractors and those who put the application together will be looking at facilities that are constructed elsewhere in the United States to see what they have done. The design of these facilities has been going on for many

years so a facility that meets the standards is probably the norm. He said to get all of the analyses done can take up to a year or more to get a permit approved.

Senator Hill asked how much DEQ works with the other agencies involved in issuing permits for these types of facilities. **Mr. Bauer** said DEQ only addresses air quality. He said that when they issue their permit, the cover letter states that this is only a permit for air quality, they still have to get the other permits required. He said DEQ does not necessarily seek out input from other agencies but they do put it out to public comment. He said they do get a lot of responses from the EPA and federal land managers.

Senator Hill asked about DEQ's mission statement and asked if their current procedures accomplish this mission. **Mr. Bauer** said in his opinion they do.

Representative Smith asked about topography studies. Mr. Bauer said topography is incorporated into air quality models.

Mr. Jon Sandoval, DEQ, Chief of Staff was the next speaker to discuss potential water quality issues. He stated that in keeping with the mission statement above, looking into the future and protecting public health and the environment is DEQ's number one concern when it comes to water quality; surface water, ground water and drinking water. He said the state has been heavily engaged for well over 100 years in assuring that water is protected in every segment of our society.

Mr. Sandoval said that in looking at permitting such a facility as discussed above, DEQ would look at the drinking water supply and make sure that such a facility is either going to have a private water via domestic well or a public water system. In the case of a private water supply, they would have to go through a permitting process at Idaho Department of Water Resources. If a facility wants to look at a public water system (PWS), they would have to come to DEQ. He said DEQ defines a PWS as a system that regularly serves an average of at least twenty five individuals daily at least sixty days out of the year. He said basically a facility would be required to connect to an existing PWS or create a new PWS of their own and meet all of the state water quality standards for drinking water.

Mr. Sandoval said for wastewater treatment and reuse a facility would have to look at sanitary wastewater options. This includes the treatment of on-site sewage. They would be required to look at options for wastewater land applications, septic systems and sometimes falling under the National Pollution Discharge Elimination System (NPDES). This is a clean water act requirement that is administered by the EPA.

Another wastewater treatment issue involves how they would handle the process of wastewater. This is the contact wastewater from pollution control equipment that would be used at the facility. This process requires that same options as listed in the preceding paragraph. Dealing with non-contract cooling water would require they meet all of the conditions of an NPDES permit or the underground injection control (UIC) program from Idaho Department of Water

Resources as it impacts shallow wells.

The last issue a facility might want to consider is stormwater runoff. **Mr. Sandoval** said that Idaho does not have the authority to manage stormwater but EPA does. There has to be consideration of stormwater runoff from coal piles, parking lots and construction or land disturbances as they build the facility.

Mr. Sandoval said DEQ does work well with other state agencies and does collaborate frequently with Idaho Department of Water Resources, health districts, county and local governments. He said there are a lot of additional steps that this facility would have to meet in order to meet all of the water quality and drinking water requirements.

Senator Stennett asked again about the mercury issue. He said he knows that DEQ has issued some warnings in south central Idaho for people to not eat fish because of mercury contamination. He asked what authority does DEQ have for water quality issues that do not happen on the site of a facility and is that part of the permitting process. **Mr. Sandoval** answered that there are a number of requirements under the state drinking water act and the clean water act that regulate a number of contaminants; arsenic, mercury, lead, heavy metals contamination. He said DEQ works with the Division of Health and the Department of Health and Welfare in looking at fish advisories for mercury consumption and potential public health impacts. He said this is something that would have to be a consideration at a facility.

Mr. Bauer, in response to **Senator Stennett's** question as to whether mercury is traceable or reportable and if it has anything to do with the issuance of a permit for a large coal fired plant, stated that there is a rule in existence for new source performance standards for coal fired power plants that has a mercury requirement in it. Any source locating in Idaho would have to meet those rules and attain those limits. It is not tied to deposition into the water, it is an air standard. **Senator Stennett** commented he has heard that there is a new federal rule that requires that there be no new additional mercury emissions in an area. He said he did not know if that area was regional or statewide or whatever. He asked if that was the rule and Idaho has zero now, how can something be permitted that adds any particulates at all. **Mr. Bauer** said that the rule is based on a national initiative to decrease emissions by a certain year. They are proposing to do that through a myriad of rules, one of which is called CAIR (the clean air interstate rule). This requires nitrogen oxides and sulfur dioxide decreases from the power industry mainly in the 28 eastern states. Doing this has also been projected to provide good decreases in mercury emissions. If Idaho has zero, with what is called "state balance", any facility locating in Idaho has to offset their emissions here with a decrease somewhere else in the nation.

Dr. Don Reading, Ben Johnson and Associates was introduced as the next speaker to give an overview of how eight western states (Arizona, California, Colorado, Montana, Nevada, Oregon, Utah and Washington) handle facility siting issues. The areas he covered include what the siting authority has authority over, what the governing body of the siting authority is, what environmental analysis they use, deadlines, fees and what role the Governors play. His complete presentation is available at the Legislative Services Office. He noted that because the rules

regarding siting are quite complex, areas that are left blank in his spreadsheet do not necessarily mean the state does not have a requirement for that issue. He explained that Ben Johnson and Associates is a consulting firm located in Tallahassee, Florida. They focus mainly on utility regulation.

Dr. Reading stated that his presentation was put together using a variety of sources. He said that when most states have siting authority, they include oil and gas pipelines which he did not include. He did include transmission. He noted that PUC Commissioner Marsha Smith who reads the new federal energy legislation as saying if states do not take specific action within one year, siting authority for transmission facilities will be preempted and taken over by FERC or the federal government. He said his spreadsheet also includes issues similar to what Commissioner Smith included in her presentation to the committee a few months ago dealing with things that need to be considered when discussing a siting authority.

Dr. Reading explained that siting authority in some states only covers generation or transmission but most states cover both. He noted that the siting authority in Nevada only covers counties over 100,000 population and that this would include mainly the cities of Las Vegas and Reno. The size of the plants covered varies widely.

The governing bodies in the states he reviewed varies. California has the California Energy Commission with full time commissioners. He said most of the governing bodies include state agencies, some include the Public Utilities Commission. These governing bodies also vary with regard to local participation. In Washington the local officials are from whatever local area is involved. Other siting boards tend to have representatives from the Associations of Cities, Associations of Counties and so on.

Senator Gannon asked if Idaho were on chart, would the governing bodies for siting be state agencies. **Dr. Reading** said in his opinion Idaho would be blank because siting authority in Idaho is dispersed between many agencies. He explained that the governing bodies included on his chart are the siting authority boards which have legislation that embodies in them the ability to issue siting permits. **Senator Gannon** said he was confused by that answer because Arizona has state agencies listed as the governing body, not a single authority. **Dr. Reading** said the his chart lists the governing body in each of these states according to their state legislation.

Senator Hill asked if the governing bodies in these states can impose additional requirements, on top of what the other state agencies require, to siting. **Dr. Reading** said they can not impose additional requirements but some states have requirements that exceed federal requirements.

Senator Hill asked if the purpose of the siting authority in all of these states is to coordinate all agencies that issue permits. **Dr. Reading** said yes and in some cases they are used to provide a major public forum to look at siting issues.

Senator Stennett asked if New Mexico, Idaho and Wyoming are the only western states that do not have siting authority. **Dr. Reading** said Idaho and Wyoming do not and that he would check on New Mexico. **Senator Stennett** commented that whoever the governing bodies of these state

siting authorities are, the people that sit on the siting board and make the ultimate decision on siting, similar to the draft legislation before the committee. **Dr. Reading** said that in Washington the Governor has the final authority. He noted that in states with volunteer boards, state agencies, fish and game, water resources and so on are parties to this and have input and have their own separate authority that has to be met. These issues are coordinated through the siting body.

Senator Stennett asked about certificates of need issued by the Public Utilities Commission. He asked if there is a limited amount of transmission capability and the transmission has been paid for by the electric utilities that exist in the state and that transmission is filled up by a merchant plant, where does state's authority or does the state have any authority to protect its ability to deliver power to its own citizens versus using the transmission lines to transfer power elsewhere. **Dr. Reading** said that states have a variety of ways to handle this and it would require further investigation because of the continuing battle between state regulatory commissioners and FERC as to what is transmission, how big is it and who has authority over transmission. He said whatever that decision is, the Idaho PUC has authority to look at need and does regulate that certain level or class of transmission facility. He said he would be happy to get that information for the committee. **Senator Stennett** said that there needs to be some authority for states to ensure that if existing transmission that ratepayers have paid for is transferred to a merchant plant to move power elsewhere, these ratepayers are not forced to pay for additional transmission necessary to provide power to the state. He asked if other states have certificates of need for transmission facilities embedded in their siting laws. **Mr. Reading** said yes. He does not know the extent of that or their ability to exceed federal regulations.

Dr. Reading commented that in the environmental category process in almost all cases involves a combination of evidentiary hearings and public process. The siting boards have various rules and regulations that dictate who are official parties, who are intervening parties and public hearings and the public access. In one case, local authorities, rather than being on the siting board, were given intervener status. This is a higher level than just public participation.

Senator Sweet asked if any cost benefit analysis has been done comparing states that have siting authorities and those that do not. **Dr. Reading** could not recall seeing any and said he would investigate further.

Senator Gannon asked in the governing body column, if local officials are not listed as part of the governing body, can state agencies just make the decision to put a plant in their area and the local authorities have no control. **Dr. Reading** said that the siting authority does not preclude local zoning's ability to override a decision. He said he does not know if state statutes preempt local authority. **Mr. Nugent** said information prepared by the Legislative Services Office shows that two states do preempt local authority. Most states allow local land use planning.

Senator Sweet said that everyone agrees that additional siting requirements will result in additional costs and it would appear to him that the consumer will be ultimate bearer of those costs. He asked if that was correct and if there is information available showing what additional

costs siting has added in other states to the ultimate delivery of energy. **Dr. Reading** agreed that the consumer ends up paying the cost of siting one way or another either through increased power bills or taxes. He said he has not seen any specific studies of what additional costs siting has added. Some say siting actually ends up costing less with more efficiency because it allows the applicant a type of one stop place to ease the permitting process. **Dr. Reading** said on other hand, it does adds another layer of bureaucracy. He noted that there is no reason legislation cannot be drafted creating a one-stop authority to ease the permitting process, with or without a siting authority.

Senator Werk summarized that Idaho seems to be the odd man out because it does not have a centralized siting authority. **Dr. Reading** said Idaho does not have a siting authority and most states have some siting authority for generation and/or transmission. **Senator Werk** noted that with regard to the environmental analysis, Idaho does not have as stringent of standards as other states. **Dr. Reading** said that was true for some states but not for all.

Senator Werk asked how a cost benefit analysis, as **Senator Sweet** asked about, could be done. **Dr. Reading** said it would be difficult and would depend on how the state wanted to deal with it. The question would be whether you want to deal with just the hard cost issues or do you want to include lifestyle or well-being issues as well.

Senator Stennett asked if states that have more stringent air and/or water quality than Idaho have any activity regarding merchant plants being located there. **Dr. Reading** said he would have to investigate that further, it would depend on the type of merchant plant.

Representative Eskridge asked if any of the governing bodies have authority to block federal requirements. **Dr. Reading** said no.

In response to another question from **Representative Eskridge**, **Dr. Reading** said siting in Colorado and Nevada is different because they have siting boards and representatives from local government and the utilities commissions sit on those boards. Whether or not a state has a siting board, all DEQ, Fish and Game and such regulations still have to be met for siting.

Ms. Donna West was the next speaker to discuss Siting from the Counties perspective. She stated that Canyon county has a very robust planning and zoning process in place to deal with any type of local land use issue.

Ms. West said that her comments are going to focus on the proposed siting legislation. She said that after reading the legislation, it is her opinion that it runs counter to the spirit and intent of the local land use planning act, it is overreaching and circumvents the local public process that is already established. Is also sets the stage for a proposed council to be lobbied and to allow state administration to enact local land use decisions which usurp the county's role in determining what happens within its boundaries.

In her reading of the legislation it seems to have state agencies dictating to counties. Essentially

the Governor's administration will be making local land use decisions. She believes the counties should have the final say with regard to land use.

Ms. West explained that Canyon County has gone through the siting of Garnett energy that included appropriate input from DEQ, Idaho Department of Water Resources, EPA, Department of Land and so on. Garnett Energy also did independent studies that looked at visual impact, air and odor emissions, storm water runoff, lighting, noise, biological impacts and so and made sure those impacts were either mitigated or elimination.

She went on to say that Idaho Power is currently planning for future sites with an advisory committee that represents all interests of the state. She said this group needs to be able to continue the work they are doing and to plan for their facilities where there is little impact on local concerns, where they have a proximity to load centers, where they have favorable geographic features, where they are close to existing pipelines and transmission routes and where they can provide significant energy generation where the need is the greatest.

Ms. West said that when Canyon County worked with Garnett Energy, the company used "best available technology" (BAT) and paid for all of the studies themselves.

In closing **Ms. West** said that the county is in the best position to determine whether a proposed site is in compliance with their comprehensive plans and ordinances. She commented that much of the legislation would require the siting council to do things that the counties already do causing duplication of effort. In the process of decision making, **Ms. West** said the county notifies all agencies.

Senator McKenzie asked if the process Garnett Energy used in Canyon County in studying lighting, visual and cultural impacts adequately addressed these impacts. **Ms. West** said yes because Garnett brought in experts to answer these questions in all areas at no cost to the county or state.

Senator Werk said the reason this siting legislation is being considered is due to the downwind impact a facility located in one county can have on another. He asked if a coal fired plant was proposed in Canyon County that would affect other areas, should Canyon be the only involve in the decision making process. **Ms. West** said the process would include anyone that would be affected by the plant just as it does do when they site CAFOs. These have a set notification distance as to whom is notified. **Senator Werk** asked for clarification of who from the other county would be involved and would they have an equal say in siting. **Ms. West** said she is not sure she can answer that directly. She said Garnett affected Middleton and they were included in process.

Senator Sweet asked if anyone was excluded from participating in the Garnett process. **Ms. West** said, no they took very long time and held monthly hearings to accommodate all that wanted to participate.

Senator Stennett said this legislation was proposed to allow citizens from other counties have seat at table. He asked if she would be opposed to this. **Ms. West** said she did not think Canyon would have any problem including other counties in the decision making process and she does not think there is a need to create a siting council to do that. Any county that might be affected should be included. In response to another question from **Senator Stennett**, **Ms. West** said in her opinion if it is a regional issue everyone affected should have an actual vote in the decision making process. She said in the past some counties have not been included but in her opinion a statewide siting council is not the answer. It is her hope to keep siting on a more local level. **Senator Stennett** asked if she would be in favor of a regional local authority being established to make the decision. **Ms. West** said yes.

Senator Werk said that other counties might not have same resources as Canyon County and asked if a smaller county was involved, would the playing field be level. **Ms. West** said she was not sure she could answer that. She said that Canyon County went through a very long and arduous process with Garnett and became very educated in the process. She said they could not have done it without the state agencies at their side or without the public.

Representative Smylie asked if it would be fair to say that most of the concerns of adjacent counties are air and water quality issues. **Ms. West** agreed. **Representative Smylie** said that since DEQ already has a process regarding air quality and water it would seem that a statewide siting council might be redundant. **Ms. West** agreed.

Representative Eskridge asked if a plant were to be located in an adjacent county, would Canyon County be comfortable with the process as it exists today. **Ms. West** said yes.

Senator Werk asked if an actual vote was taken on siting Garnett or was it pulled from consideration. **Ms. West** said it did come to a vote by planning and zoning. They voted in favor but the decision was appealed by three different entities include Garnett Energy so a hearing was held at the board level. That was also voted on and approved.

Senator Sweet asked if they received any written comments during this process from anyone stating they felt they were excluded from process. **Ms. West** said none along those lines.

Senator Lodge asked if Payette County or others gave testimony. **Ms. West** said she does not remember any.

Senator Werk informed the committee, regarding an earlier question about whether any states had health based standards for certain pollutants, that Massachusetts has health based standards as well as technology based standards and they use the more stringent of the two.

Representative Cannon noted that he was going to have to leave the meeting early and wanted to comment that if the committee votes on the siting issue he would vote to leave things as they are. In his opinion a siting authority in Idaho would stop energy facilities from locating in Idaho.

Senator Hill commented that committee members can endorse the siting legislation or not or can endorse the concept with the caveat that additional work be done on it.

Senator Gannon moved that the committee not endorse the proposed siting legislation. Senator Sweet seconded.

Representative Eskridge made a substitute motion that the committee not pursue siting authority for generation for this interim. Representative Smylie seconded the substitute motion.

Representative Bell asked why the original motion that deals with a specific piece of legislation would not still leave the committee open to discuss **Representative Eskridge's** concerns regarding transmission. **Representative Eskridge** explained that since the original motion deals with a specific piece of legislation, if it were to fail, the committee could still discuss other possibilities for a siting authority for generation facilities. He said he would like to see the committee leave that behind for this interim and move on to discuss other issues.

Senator Stennett made an amended substitute motion that the committee endorse the concept of developing a siting authority that uses a governing body that has authority regarding the siting of large scale transmission and generation facilities. Senator Werk seconded.

Senator Sweet said it was his understanding that if the committee supported the original motion, it would not preclude them from discussion of other issues including transmission. **Senator Hill** agreed. The original motion only deals with the proposed legislation. The substitute motion is not interested in the legislation and says the committee is not interested in discussing generation facility siting this interim. **Representative Eskridge** said that was correct. His motion is that the committee would leave the issue behind for this interim and address it either in the germane committees or in the next interim. **Senator Hill** said it is his assumption that if the original motion is adopted, it will not be revisited again this afternoon.

Senator Stennett in favor of the amended substitute motion said this is not a new issue. He explained that he had presented the committee with legislation that was actually proposed by Governor Batt in 1978 when he was in the legislature. This passed the Senate and after being amended on the House floor was pulled. This legislation was in response to a proposed Pioneer coal fired power plant that was proposed by Idaho Power in the mid 1970s. It basically asked the PUC to establish a certificate of need. This was before the time of merchant plants that come to a state and use our resources (air and water) to produce electricity to be shipped out of state. In his opinion one basic question that this committee and the legislature should weigh in on is whether Idaho's resources are being used wisely for the benefit of Idahoans. He said this issue has not been dealt with because there have not been any proposals for such plants in Idaho until now. There are a number of them today because Idaho is a state that does not have a siting act. **Senator Stennett** said it seems that these plants are coming to Idaho because the state is not prepared to address them adequately. He said if this committee turns their back on the ability to

have a say, we will not be using the resources of Idaho for the benefit of Idahoans, we will be using the resources of Idaho for citizens outside of Idaho. He encouraged the committee to support his motion and if necessary start over on legislation.

Senator Werk addressed the fact that some committee members feel that siting might be an attempt to stop energy facilities from locating in the state. He noted that Idaho is one of few states that does not have a siting authority. Most of our surrounding states have siting authorities and that has not stopped plants from locating there. In his opinion Idaho is in the dark ages with regard to siting and it is time to do something. **Senator Werk** said that he does not think a siting authority will raise prices because having a one-stop place to go will streamline the process and make it easier and more accessible.

Senator Werk noted that Idaho already has a precedent for excluding public testimony. The local public interest excludes people from more than one mile around for CAFO projects and there is no law that says a county has to take testimony into account from a downwind county.

Senator Werk went on to say that in his opinion further exploration of the idea of a siting authority would be beneficial for all Idahoans and it would ensure that decisions that are made would be made in the best interests of all of our citizens. He encouraged the committee to support the amended substitute motion.

Representative Eskridge spoke against the amended substitute motion. He said in his opinion it is wrong to say that Idaho does not have a siting authority. He admitted that we do not have a centralized authority but we do have a partnership authority. There are the local governments that have the land use planning under their jurisdiction, state authority in terms of air and water. He said through the testimony today, air and water for the benefit of Idaho citizens is being covered and addressed. In addition to that, from what was said earlier, the legislature can impose additional requirements in terms of public involvement and in terms of higher standards for air and water quality. **Representative Eskridge** said that there is also the federal entity that has some authority over siting of facilities and in some cases there is also tribal authority. So in his opinion Idaho has the authority, it is just not centralized.

Senator Hill said he does not think Idaho is behind and is not in favor of more government or of adding additional layers. He said he has not heard any complaints from DEQ or Idaho Department of Water Resources that the public interest is not being taken into account. In his opinion the public is protected and the agencies are doing their jobs. He has heard that a siting authority will help facilitate projects, but the public view seems to be that a siting authority will help prevent the construction of additional generation facilities in the state. He said he does not want to give that perception to his constituents nor to the developers who are willing to develop and invest in power production in Idaho. He said he does not support the amended substitute motion.

**The amended substitute motion failed with 10 nays 3 ayes.
The substitute motion carried with 11 ayes 2 nays.**

After lunch **Representative Eskridge** distributed a handout from the Edison Electric Institute regarding the energy bill recently passed by Congress. This article was published in August 2005 and is available at: www.eei.org. **Representative Eskridge** said this article summarizes what is in the energy bill.

Representative Eskridge highlighted some of the provisions of the act as they relate to electricity as published in this article. He said the most obvious provisions are in the tax incentives the energy act brings about in terms of new generation, renewables and coal gasification. It also includes energy efficiency provisions, an acknowledgment of climate change and what can be done to help the global warming issue. It includes incentives for innovative technology and looks at portion of the oil and gas titles. **Representative Eskridge** said all of these will impact how utilities conduct their business and to some degree will dictate what states might do regarding energy policy.

Representative Eskridge went on to say that the energy policy act helps ensure electric reliability and makes electric reliability rules mandatory on all users, owners and operators of the nations transmission system. Before this there was just a sort of agreement between entities that established reliability criteria. Now this is accomplished by creating a self-regulating reliability organization with federal energy regulatory (FERC) oversight to enforce the reliability rules.

The act grants FERC, for the first time, authority to approve the siting of electric transmission facilities located in “national interest electric transmission corridors” if states cannot or will not act in timely manner to approve the siting. The Department of Energy (DOE) must identify these corridors, which may include any geographic area experiencing electric transmission capacity constraints or congestion, within one year of enactment or every three years thereafter. Holders of a FERC siting permit may exercise eminent domain authority in federal court. The article says that many observers hope that the mere threat of federal involvement will help expedite state siting matters. In other words, **Representative Eskridge** said this means that if the state does not act, FERC will do it for them.

Representative Eskridge went on to explain that the act also seeks to expedite siting approvals by federal agencies by designating the DOE as the lead federal agency for purposes of coordinating all federal approvals and related environmental reviews related to siting transmission facilities. He said this gives him some hope. From his background, one of the difficult issues in siting major transmission facilities was the federal land management agencies.

The act also give FERC the authority to facilitate planning and expansion of transmission facilities to satisfy distribution utility service obligations to retail customers and to enable such utilities to secure firm transmission rights or equivalent tradable or financial rights on a long term basis to meet such obligations.

Representative Eskridge added that the act also encourages investment in transmission. The repeal of the Public Utility Holding Company Act is effective February 6, 2006 and this will eliminate significant federal restrictions on the scope, structure and ownership of electric

companies. Some feel this will provide greater efficiencies through consolidation among utilities across the country and will attract potential investors that include foreign utilities, financial institutions, private equity groups and other energy and industrial groups.

Representative Eskridge said that the Energy Act retains for the states the ultimate decision on whether to continue traditional regulations of sales to end use customers or to allow retail competition for electricity. He said this is important to Idaho because it refrains from mandating regional solutions for wholesale markets.

He said Section 1252 prospectively repeals the mandatory purchase and sales requirements of section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) in competitive markets. **Representative Eskridge** said he is not sure how that affects Idaho and states that do not deregulate their retail market.

The act allows federally owned utilities to participate in regional transmission organizations (RTOs). He said that would apply to Bonneville Power in our area.

Representative Eskridge said the act also provides a wide spectrum of cleaner fuels for new electric generation plants. It authorizes \$200 million a year from 2006 to 2014 for the clean coal power initiative. This is a federal government cost share program to conduct demonstrations of commercial scale, advanced clean coal technologies. It authorizes almost \$1.1 billion over three years in funding DOE's clean coal research and development program and provides tax credits for integrated coal gasification combined cycle and advanced combustion facilities.

The act also authorizes funding for research and development and establishes a new production tax credit for electricity produced at new nuclear generation facilities.

Representative Eskridge said the act also supports renewable energy resources including hydropower. He said he is not sure how hydropower is defined in this instance. It also improves the hydro relicensing process under FERC by requiring federal resource agencies to consider more cost-effective alternatives and by providing efficiency incentives at existing dams.

Title XVI of the act establishes a Climate Change Technology Program that uses greenhouse gas intensity as a measure of success for innovative technologies and partnerships with developing nations. Loan programs may be utilized to assist in the development of advanced fossil fuel generation, advanced nuclear energy and other technology including carbon capture and carbon sequestration.

The act directs DOE to establish efficiency standards for a wide variety of consumer and commercial products that use electricity. It provides tax credits for energy efficient new homes as well as for installing energy efficient and renewable energy improvements in existing homes.

The states are directed to consider net metering, fuel diversity, fossil fuel generation efficiency, smart metering and demand response matters often with federal assistance.

Within one year, DOE must designate national interest transmission corridors and complete

MOUs with other federal agencies regarding coordinated transmission permitting while FERC must complete transmission incentives and native load priority rules. **Representative Eskridge** expressed concern that if the state does not get involved in transmission siting, we will be left behind and the federal government will do it for us.

Senator Werk clarified that the act allows the federal government for national security purposes to establish a national transmission corridor or corridors. **Representative Eskridge** said this was not just for security purposes, it is for national interest in terms of providing electricity for areas that are suffering under transmission constraints.

Representative Nonini how will this impact reservations in Idaho or elsewhere regarding the federal government's ability to preempt states. **Representative Eskridge** said that was not covered but his assumption is that the tribes would be treated like other federal agencies and asked to coordinate.

Senator Hill said the committee was originally formed to study deregulation. Now that charge has been expanded to energy, environment and technology which is a very broad topic. He said the committee has a responsibility to learn about different issues even if they do not move forward with legislation. He asked what direction the committee wants to go for the next meeting.

Representative Smylie expressed interest in looking at nuclear energy and the controversy over PURPA rates and wind generation. He would also like to look at transmission and if state policy is affected as the energy landscape changes.

Senator Gannon said he would be interested in discussing ethanol issues.

Senator Hill said he would talk to the Farm Bureau about giving such a presentation since they are working on ethanol legislation.

Senator Gannon said he also like to look at transmission due to the fact that if the state does not do something, the federal government will do it for us and that he would hope the committee could present something to legislature.

Representative Nonini agreed that the committee needs to discuss transmission because it runs through multiple counties and that without legislation to deal with that we could run into problems down the road.

Senator Werk said he has been approached by people in the technology industry who have expressed interest in a giving presentation to the committee as to what is happening and available in that arena.

Senator Hill asked how to structure next meeting around transmission siting. **Representative Eskridge** suggested having a discussion regarding the need for siting from utilities and non-utilities. He knows that transmission is an issue both regionally and nationally. He suggested

the committee look at sample NCSL legislation and for members to come up with their own ideas and suggestions.

Senator Hill said the background regarding siting has been done and suggested the committee could just move that to transmission. He said that the discussion on siting will be on agenda for next meeting and should include industry, the PUC and state agencies standpoints.

The next meeting was scheduled for November 15, 2005.

Representative Eskridge suggested as agenda item an NCSL presentation on energy policy.

The meeting was adjourned at 2:10 p.m.